

**Feb 27, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STEVE BONNER, individually,

Plaintiff,

v.

REXON INDUSTRIAL CORP. and  
SEARS, ROEBUCK & CO.

Defendants.

NO. 2:18-cv-00288-SAB

**ORDER DISMISSING  
DEFENDANT**

Before the Court is Defendant Rexon Industrial Corp. (“Rexon”)’s Notice of Motions and Motions to Dismiss, ECF No. 28. Defendant moves for dismissal for lack of personal jurisdiction. Plaintiff brings tort claims for products liability, negligence, and breach of warranty, for an injury incurred while Plaintiff used a saw purchased from Defendant Sears, Roebuck & Co., (“Sears”), naming that company as a defendant along with codefendant Rexon.<sup>1</sup> ECF No. 1. Rexon is an upstream supplier domiciled in Taiwan.

Rexon moves for dismissal for lack of personal jurisdiction, alleging that Washington State does not have general jurisdiction over them, and that what

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<sup>1</sup> Another codefendant, Power Tools Specialist Inc., was dismissed by stipulation. ECF No. 58.

1 limited contact they may have with this forum are not related enough to the instant  
2 claim to confer specific jurisdiction. Having read the motion, briefing, and  
3 supporting affidavits, the Court agrees with Defendants.

4 Plaintiff primarily addresses whether the exertion of personal jurisdiction to  
5 Rexon would violate due process. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,  
6 464 (1985). However, prior to evaluating whether exerting jurisdiction would  
7 comport with due process, it must be determined whether jurisdiction over Rexon  
8 exists at all. *See Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir. 1987).

### 9 ***General Jurisdiction***

10 Rexon does not have the “continuous and systematic” contacts that render  
11 them essentially at home in this forum, and thus subject to the general jurisdiction  
12 of Washington. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915,  
13 919 (2011). Plaintiff identifies the following forum-related contacts:

- 14 • From 1992 to 2001, Rexon conducted business with a Washington  
15 corporation, JPW Industries Inc.
- 16 • From 2008 until the present, Rexon has done business with a Washington  
17 corporation, Precor.

18 These contacts are far below the amount and type necessary to make Rexon  
19 essentially “at home” in Washington, and thus subject to Washington’s general  
20 jurisdiction. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th  
21 Cir. 2011).

### 22 ***Long-Arm Specific Jurisdiction***

23 Where, as here, there is no applicable federal statute governing personal  
24 jurisdiction, the Court applies the law of the state in which the district court sits.  
25 *Amoco Egypt Oil Co. v. Leonis Nav. Co.*, 1 F.3d 848, 850 (9th Cir.1993).  
26 Washington’s long-arm statute provides a potential basis for specific jurisdiction,  
27 provided that the cause of action arises from the defendant’s commission of one of  
28 the enumerated acts. RCW 4.28.185(3). There are two potential enumerated acts in

1 the long-arm statute that might provide a basis for jurisdiction over Rexon, one  
2 relating to transacting business within Washington, and the other relating to torts  
3 occurring within Washington. RCW 4.28.185(1)(a),(b). The claim arises out of a  
4 sale conducted in Washington, between Plaintiff and Sears, and it allegedly  
5 resulted in a tort occurring within Washington. For jurisdiction to extend to a  
6 defendant, the defendant must (1) purposefully do some act or consummate some  
7 transaction in Washington; (2) the cause of action must arise from, or be connected  
8 to that act or transaction; and (3) the exertion of jurisdiction must be consistent  
9 with due process. *Shute v. Carnival Cruise Lines*, 113 Wash. 2d 763, 767 (1989).  
10 Purposeful availment is not met here.

11 Plaintiff's argument is that Rexon has minimum contacts with Washington  
12 by placing the saw into the stream of commerce. While Washington courts have  
13 approved of a broad theory of personal jurisdiction based on placing goods into the  
14 stream of commerce, *Smith*, 81 Wn.2d at 723, more recent federal precedent places  
15 that theory in doubt. "The placement of a product into the stream of commerce,  
16 without more, is not an act purposefully directed toward a forum state." *Holland*  
17 *Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007). "Even a  
18 defendant's awareness that the stream of commerce may or will sweep the product  
19 into the forum state does not convert the mere act of placing the product into the  
20 stream of commerce into an act purposefully directed toward the forum state." *Id.*  
21 Instead, a plaintiff must allege additional conduct "indicat[ing] an intent or purpose  
22 to serve the market in the forum State." *Asahi Metal Indus. Co., Ltd. v. Superior*  
23 *Court of California, Solano Cnty.*, 480 U.S. 102, 112 (1987) (plurality opinion).

24 Rexon admits that it manufactured the product in this case, but it did so in  
25 Taiwan. It sold the saw to co-Defendant Sears, a foreign company, with title  
26 passing in China, and had no influence whatsoever with Sears's subsequent  
27 marketing or sale of the product to Washingtonians. Rexon took no additional step  
28 to indicate an intent to serve Washington. In order for specific jurisdiction to vest,

1 there must be a connection between a defendant’s conduct and the forum, based on  
2 the defendant’s contacts with the forum itself, and not based on the “random,  
3 fortuitous, or attenuated contacts” a defendant makes by interacting with other  
4 persons affiliated with the State. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,  
5 475 (1985).

6 Although Defendant has, at times, purposefully availed itself of Washington,  
7 the claim does not arise out of or relate to any of the limited contacts that Raxon  
8 has directly had with this forum. *See Williams v. Yamaha Motor Co.*, 851 F.3d  
9 1015, 1023 (9th Cir. 2017). Accordingly, the long-arm statute does not confer  
10 personal jurisdiction over Raxon in this matter.

11 *Contractual Consent to Personal Jurisdiction*

12 Plaintiff’s second argument for personal jurisdiction is based on Raxon’s  
13 contract with Sears. That contract contains an indemnity and defense provision,  
14 under which Raxon agrees to indemnify and defend Sears in the event of a lawsuit  
15 arising from the contract between Raxon and Sears. Plaintiff argues that Raxon  
16 thus consented to personal jurisdiction in any forum in which Sears might be  
17 subjected to such a suit.

18 Washington Courts of Appeal have addressed the question of whether an  
19 indemnity clause can provide personal jurisdiction over a third-party defendant as  
20 co-extensive with the question of whether the third-party defendant “had sufficient  
21 contact with the State of Washington in connection with this transaction so that the  
22 primary plaintiff . . . could have maintained their action against the third-party  
23 Defendant in this state.” *Barer v. Goldberg*, 20 Wash. App. 472, 478, 582 P.2d  
24 868, 872 (1978). Thus, the contractual argument fails for the same reason that the  
25 long-arm argument does – an absence of minimum, purposeful, forum-related  
26 contacts from which the suit arises.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant Rexon Industrial Corp.'s Notice of Motion and Motion to  
3 Dismiss, ECF No. 28, is **GRANTED**.

4 2. All of Plaintiff's remaining claims against Defendants Rexon Industrial  
5 Corp. are **DISMISSED WITHOUT PREJUDICE**.

6 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
7 file this Order and provide copies to counsel.

8 **DATED** this 27th day of February 2020.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

14 Stanley A. Bastian  
15 United States District Judge  
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